

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 04-04981 WHA

MARGIE CHERRY and ESTORIA CHERRY,
on behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

THE CITY COLLEGE OF SAN FRANCISCO
("City College") LAWRENCE WONG, in his
official capacity as President of the Board of
Trustees, MILTON MARKS, III, in his official
capacity as Vice-President of the Board of
Trustees, DR. NATALIE BERG, JOHNNIE
CARTER, JR., DR. ANITA GRIER, JULIO J.
RAMOS, RODEL E. RODIS, in their official
capacities as members of the Board of
Trustees, and DR. PHILIP R. RAY, JR., in his
official capacity as Chancellor,

Defendants.

**ORDER GRANTING
DEFENDANTS' MOTION
FOR LEAVE TO FILE
SUMMONS AND
CROSS-COMPLAINT AND
VACATING HEARING**

After stipulated judgment was entered on the underlying disabilities-rights action,
defendants move for leave to file a cross-complaint against certain contractors for
indemnification. Defendants' motion is not opposed.

Federal Rule of Civil Procedure 14(a) provides:

At any time after commencement of the action a defending party,
as a third-party plaintiff, may cause a summons and complaint to
be served upon a person not a party to the action who is or may be

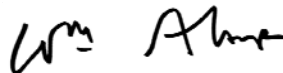
1 liable to the third-party plaintiff for all or part of the plaintiff's
2 claim against the third-party plaintiff.

3 If the cross-complaint is to be filed more than ten days after an answer is filed in the case, Rule
4 14(a) requires leave of court. Even where the cross-complaint lacks an independent basis for
5 subject-matter jurisdiction, a court will be able to adjudicate the claim under its ancillary
6 jurisdiction. "The purpose of this rule is to promote judicial efficiency by eliminating the
7 necessity for the defendant to bring a separate action against a third party who may be
8 derivatively liable to the defendant for all or part of the plaintiff's original claim." *Kim v.*
9 *Fujikawa*, 871 F.2d 1427, 1434 (9th Cir. 1989).

10 The contractors may be derivatively liable to defendants for the costs of improvements
11 to the City College campuses required by the stipulated judgment. This order thus finds that
12 defendants are entitled to file a cross-complaint under Rule 14(a). Defendants' motion,
13 therefore, is **GRANTED**. Defendants are instructed to file and issue summons on their cross-
14 complaint by no later than **JUNE 1, 2006**. Finding no further argument necessary, the hearing on
15 this motion is hereby **VACATED**.

16 **IT IS SO ORDERED.**

17
18 Dated: May 15, 2006



19 _____
20 WILLIAM ALSUP
21 UNITED STATES DISTRICT JUDGE

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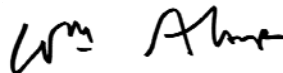
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